

JOHN C. SCHANDELMEIER

IBLA 79-111

Decided August 22, 1979

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting a mining claim recordation filing and declaring the claim to be null and void. AA 18907.

Affirmed.

1. Alaska: Land Grants and Selections: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims – Recordation

Under 43 CFR 2091.6-4 and 2627.4(b), the filing of an application by State of Alaska to select lands segregates those lands from all subsequent appropriations, including locations under the mining law. A mining claim located on land which has been segregated and closed to mineral entry is properly declared null and void ab initio.

2. Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous information provided by employees of BLM cannot create any rights not authorized by law.

APPEARANCES: John C. Schandelmeier, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

John C. Schandelmeier appeals from a decision by the Alaska State Office, Bureau of Land Management, dated November 14, 1978, which rejected his mining claim recordation filing for Paxson's Miss mining claim and declared the claim to be null and void because it had been

located at a time when the land was not open to operation of the mining laws. 1/

The claim notice indicated the location was situated 8 miles south of Paxson Lodge, fronting on the Richardson Highway at Bear Creek. BLM determined this site to be within unsurveyed S 1/2 SW 1/4, W 1/2 SW 1/4 SE 1/4, section 8, T. 22 S., R. 12 E., Fairbanks meridian. The official land status records of BLM show that the S 1/2 SW 1/4, W 1/2 SW 1/4 SE 1/4, section 8, were included in state selection application Fairbanks 028093, filed July 14, 1961. In addition, the subject lands were included in a modification of the order for classification for multiple use management, F 955, published as 35 FR 16, January 1, 1970, which segregated the land from operation of the general mining laws; and PLO 5150, 36 FR 25410, December 31, 1971; PLO 5151, 37 FR 142, January 6, 1972; and PLO 5190, 37 FR 6088, March 17, 1972, which established a utility and transportation corridor and withdrew the land from prospecting, location and purchase under the mining laws.

The regulations, 43 CFR 2091.6-4 and 2627.4(b), provide that land desired by the State of Alaska will be segregated from all appropriation based on settlement, or location, including location under the mining laws, when the State files its application for selection in the proper office properly describing the lands. Thus it is apparent that the land involved in the Paxson's Miss claim has been withdrawn from mineral entry at all times since July 14, 1961.

[1] Where lands have been segregated from location and entry under the mining laws as a result of a State selection application and the application has been noted to the official records of BLM, an attempt to locate a mining claim on such segregated land is a nullity and the claim is properly declared null and void ab initio. Earl D. Woody, 38 IBLA 385 (1978); J. R. Nesmith, 38 IBLA 357 (1978); Janelle R. Deeter, 34 IBLA 81 (1978); William J. Smith, 33 IBLA 47 (1977).

Appellant states he had been given verbal confirmation that the ground embraced in the Paxson Miss claim was open to entry before he made the location. He does not further explain who gave this information.

[2] Reliance upon erroneous information or opinion given by any officer or employee of BLM cannot operate to create any right not

1/ The copy of the hand-written notice submitted to BLM did not designate whether the subject mining claim was a lode claim or a placer claim. As the description indicated dimensions of 600 feet by 1500 feet, it is presumed that the claim was a lode.

authorized by law. 43 CFR 1810.3(c); Island Creek Coal Co., 35 IBLA 247, 85 I.D. 161 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Joan B. Thompson
Administrative Judge

